

Message Text

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TO AMEMBASSY MADRID PRIORITY

INFO AMEMBASSY COPENHAGEN PRIORITY

AMEMBASSY WARSAW PRIORITY

AMEMBASSY BUCHAREST PRIORITY

AMEMBASSY MOSCOW PRIORITY

AMEMBASSY SOFIA PRIORITY

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SUBJECT: US/SPAIN EXPLORATORY TALKS ON GOVERNING
INTERNATIONAL FISHERY AGREEMENT (GIFA)

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1. SUMMARY: EXPLORATORY TALKS ON GIFA CONCLUDED ON
SEPTEMBER 22 AND HEADS OF US AND GOS DELS SIGNED JOINT
DELEGATION REPORT ON SEPTEMBER 23. ATTACHED TO DELEGATION
REPORT ARE WORKING PAPERS INCLUDING TEXT OF DRAFT AGREEMENT

AND THREE ANNEXES WHICH DO NOT COMMIT EITHER SIDE, BUT WILL SERVE AS BASIS FOR FORMAL NEGOTIATIONS WHICH BOTH SIDES AGREED SHOULD TAKE PLACE SOON, PROBABLY IN EARLY NOVEMBER. UNRESOLVED ISSUES WERE PLACED IN BRACKETS IN TEXT OF THE WORKING PAPERS. GOS STATED IT SHARED OBJECTIVES SET FORTH IN US LAW, BUT ARGUED FOR SPECIAL CONSIDERATION INVOLVING US COMMITMENTS TO AVOID DISRUPTION TO SPANISH FISHERY OFF US COAST. GOS DEL ATTEMPTED TO LINK FISHERIES TO CONTEXT OF OVERALL US/GOS RELATIONS. GOS DEL WAS UNHAPPY WITH INFLEXIBILITY OF US POSITION AND US INABILITY TO MAKE COMMITMENTS UNDER US LAW THAT WOULD GIVE MORE FAVORABLE TREATMENT TO SPAIN THAN TO OTHER COUNTRIES (I.E. ASSURANCES ON THE CONTINUATION OF GOS FISHERIES OFF US

COAST). DIRECTOR GENERAL MORO STATED HE WOULD REPORT THIS UPON RETURN TO MADRID, AND EXPRESSED VIEW THAT IT WOULD BE DIFFICULT FOR GOS TO CONCLUDE AGREEMENT UNDER SUCH CIRCUMSTANCES. DEPT.'S ASSESSMENT IS THAT WHILE TWO SIDES APPEAR FAR APART AT THIS POINT, GOS WILL EVENTUALLY SIGN A GIFA THIS YEAR. ECON/COMM COUNSELOR GOODSPEED SAT IN ON WRAP UP SESSION AND IS BRINGING COPY OF WORKING PAPERS TO MADRID. END SUMMARY.

2. IN PARA 3 OF PREAMBLE AND PARA 1. OF ARTICLE II OF GIFA, GOS QUESTIONED AS A MATTER OF PRINCIPLE US MANAGEMENT AUTHORITY OVER ANADROMOUS SPECIES BEYOND 200 MILES AND REQUESTED BRACKETS AROUND THE WORDS "THROUGHOUT THEIR MIGRATORY RANGE". IN WRAP UP SESSION MORO REPEATED THAT GOS DOES NOT HAVE A HIGH SEAS FISHERY FOR ANADROMOUS SPECIES, AND INDICATED THIS POINT IS NOT EXPECTED TO BE A MAJOR ONE IN TERMS OF SIGNING AGREEMENT.

3. AT REQUEST OF GOS DEL THE WORDS "CONSISTENT WITH INTERNATIONAL LAW" WERE ADDED IN BRACKETS AT THE END OF ARTICLE I. GOS DEL STATED IT WOULD ACCEPT US LAW SO LONG AS IT WAS CONSISTENT WITH INTERNATIONAL LAW. US DEL LIMITED OFFICIAL USE
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STATED WHILE THERE MAY BE DIFFERENCES IN THE INTERPRETATION OF INTERNATIONAL LAW, THE US WAS FULLY COMMITTED TO THE IMPLEMENTATION OF ITS LAW AND THAT THE GIFA WAS STRUCTURED ON THE BASIS OF THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976.

4. THE GOS DEL REQUESTED TO DELETE PARA 5.B. OF ARTICLE II AND TO REWORD PARA 5.C. AS FOLLOWS: "ANY OTHER ACTIVITY THAT RESULTS IN THE CATCHING, TAKING OR HARVESTING OF FISH;" THE GOS WAS CONCERNED THAT EXISTING LANGUAGE IN THE GIFA MIGHT BE LOOSELY INTERPRETED BY US ENFORCEMENT AGENTS. US DEL EXPLAINED THAT ATTEMPTED CATCHING, TAKING OR HARVESTING OF FISH WOULD CLEARLY BE INTERPRETED BY THE US

AS FISHING.

5. THE GOS REQUESTED DELETION OF "TRANSPORTATION" UNDER THE DEFINITION OF FISHING VESSEL IN ARTICLE II, PARA 6.B. THE GOS VIEW IS THAT VESSELS USED TO EXCHANGE CREWS FOR EXAMPLE SHOULD NOT REQUIRE PERMITS. THE US DEL REPLIED ALL VESSELS OPERATING IN SUPPORT OF FISHING ACTIVITIES, INCLUDING CREW TRANSFER VESSELS, WOULD BE INCLUDED UNDER THE ACT.

6. A NEW PARAGRAPH UNDER ARTICLE III, PARA 3 WAS REQUESTED BY THE GOS DEL TO ENSURE THAT RESTRICTIONS ON GOS FISHERIES WILL NOT PREVENT THE TAKING OF ANY QUOTAS

ALLOCATED TO SPAIN FOR REASONS OF A TECHNICAL, ECONOMIC, OR OPERATIONAL NATURE OR HAVING TO DO WITH THE CHARACTERISTICS OF GOS FISHING VESSELS. THE US DEL EXPLAINED THAT IMPOSITION ON FOREIGN VESSELS OF NECESSARY MANAGEMENT AND CONSERVATION MEASURES SUCH AS AREA, SEASONAL, FISHING GEAR AND VESSEL LIMITATIONS MAY PROVE NECESSARY IN THE FUTURE. SUCH MEASURES MAY REQUIRE FOREIGN VESSELS TO ALTER PRESENT PATTERNS OF FISHING, BUT NOT BE INTENDED TO MAKE IT IMPOSSIBLE FOR FOREIGN COUNTRIES TO TAKE ALLOCATIONS. THE US SIDE SUGGESTED INCLUDING A POSSIBLE AGREED MINUTE TO THE EFFECT THAT THE TWO COUNTRIES CONSULT PROMPTLY IN THE EVENT GOS OFFICIALS CONCLUDED THAT US RESTRICTIONS ON GOS FISHERIES MADE IT IMPOSSIBLE FOR SPAIN TO TAKE ITS ALLOCATION. GOS REPLIED US PROPOSAL LIMITED OFFICIAL USE
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DID NOT GO FAR ENOUGH IN ASSURING PROTECTION OF GOS INTERESTS.

7. GOS DEL REQUESTED THAT IN DETERMINING THE PORTION OF THE SURPLUS THAT MAY BE MADE AVAILABLE TO VESSELS OF SPAIN, THE US INCLUDE A CRITERION UNDER ARTICLE IV, "EXISTING TREATIES BETWEEN THE US AND SPAIN." THE GOS DEL UNDERScored THEIR CLAIM FOR PREFERENTIAL TREATMENT FOR SPANISH FISHERIES BASED ON OUR OVERALL ECONOMIC AND POLITICAL TIES WITH SPAIN. US DEL EXPLAINED THAT GIFA ONLY ESTABLISHES THE PRINCIPLES AND PROCEDURES UNDER WHICH THE GOS MAY APPLY FOR A PORTION OF ANY SURPLUS WHICH MAY BE AVAILABLE FOR ALLOCATION TO FOREIGN COUNTRIES AND THE US LAW DOES NOT PROVIDE POSSIBILITY OF GUARANTEEING A FISHERY. THUS THE US IS UNABLE TO INCLUDE ASSURANCES IN THE GIFA WHICH WOULD ACCOMMODATE THE GOS POSITION. AT THE SAME TIME, THE US DEL NOTED THAT IT WOULD TAKE INTO ACCOUNT TRADITIONAL GOS FISHERIES, COOPERATION BY SPAIN IN FISHERIES AND OTHER CRITERIA IN THE LAW WHEN DETERM ALLOCATIONS OF ANY AVAILABLE SURPLUS FOR FOREIGN COUNTRIES

8. UNDER ARTICLE VI, THE GOS DEL REQUESTED THAT THE FEES CHARGED SHALL NOT BE SO HIGH AS TO PREVENT THE TAKING OF ANY QUOTAS ALLOCATED TO SPAIN. THEUS DEL EXPLAINED THAT THE FEE SCHEDULE WAS STILL BEING DEVELOPED AND THAT UNDER THE LAW, IT MUST BE REASONABLE AND NON-DISCRIMINATORY WITH RESPECT TO FOREIGN FISHING. THE US DEL STATED IT COULD GIVE NO ASSURANCES ON WHAT ECONOMIC IMPACT THE FEE STRUCTURE MIGHT HAVE ON FOREIGN COUNTRIES. THE US DEL EMPHASIZED THAT THE FEE SCHEDULE WOULD NOT BE DESIGNED TO PRECLUDE FOREIGN FISHING IN THE US ZONE.

9. ON THE SAME RATIONALE NOTED IN PARA 8, ABOVE, THE GOS DEL REQUESTED BRACKETS AROUND LANGUAGE REQUIRING RE-

IMBURSEMENT TO USG FOR THE COSTS INCURRED IN THE UTILIZATION OF US OBSERVERS IN PARA 4 OF ARTICLE VIII. THE US DEL STATED SUCH COMPENSATION IS REQUIRED UNDER THE ACT, THAT THE DEGREE OF PARTICIPATION OF US OBSERVERS ABOARD THE GOS FLEET COULD NOT BE PROJECTED AT THIS TIME, AND THE US IS UNSURE AT THIS TIME HOW OBSERVER COST WILL LIMITED OFFICIAL USE
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BE REFLECTED.

10. GOS DEL REQUESTED BRACKETS AROUND PARA 5 OF ARTICLE VIII. THE US DEL STATED THAT THE ACT PROVIDES THAT FOREIGN COUNTRIES ASSUME RESPONSIBILITY FOR REIMBURSING US CITIZENS FOR DAMAGE TO THEIR VESSELS, FISHING GEAR OR CATCH CAUSED BY FISHING VESSELS OF THE FOREIGN COUNTRY. THE US DEL NOTED IN THE CASES OF SOME COUNTRIES (I.E. POLAND AND THE USSR) A SEPARATE FISHERIES BOARD HAD BEEN ESTABLISHED FOR VOLUNTARY OUT-OF-COURT CONCILIATION OF DAMAGE CLAIMS IF THE CLAIMANT AND RESPONDENT WISH TO ATTEMPT TO RESOLVE CLAIMS THROUGH THE BOARD. THE GOS DEL REQUESTED INCLUSION OF AN ARTICLE IN THE GIFA TO ESTABLISH SUCH A BOARD. THE US DEL AGREED TO INSERT A NEW ARTICLE IX FOR THIS PURPOSE, BUT EMPHASIZED THAT THE NEW ARTICLE WOULD NOT SUBSTITUTE FOR PARA 5 OF ARTICLE VIII, NOR PRECLUDE US CLAIMANTS FROM SEEKING COMPENSATION THROUGH THE COURTS.

11. GOS DEL QUESTIONED THE US AUTHORITY TO IMPOSE CORPORAL PUNISHMENT FOR FISHING VIOLATIONS UNDER ARTICLE X OF ORIGINAL DRAFT GIFA (NOW ARTICLE XI). THE US DEL EXPLAINED IMPOSITION OF IMPRISONMENT WAS POSSIBLE UNDER THE US LAW AND THAT THE PURPOSE OF PARA 3 OF ARTICLE X OF ORIGINAL DRAFT GIFA WAS TO ASSURE A RECOMMENDATION TO THE COURT THAT PENALTIES FOR SPECIFIC VIOLATIONS OF FISHERY REGULATIONS NOT INCLUDE CORPORAL PUNISHMENT. THE GOS DEL REQUESTED BRACKETING THIS PARA.

12. US DEL PROPOSED DELETION OF ARTICLE XIII OF ORIGINAL DRAFT GIFA REGARDING PORT CALLS. ARTICLE INITIALLY FORMULATED TO COVER SPECIAL NEEDS OF EAST EUROPEAN COUNTRIES ONLY, WHICH ARE NOT PERMITTED ACCESS TO US PORTS EXCEPT THROUGH SPECIFIC AGREEMENT WITH US. OTHER NATIONS SUCH AS SPAIN, AS MATTER OF LONGSTANDING PRACTICE, ARE NOT DENIED ENTRY TO US PORTS FOR PURPOSES OF RESUPPLYING, REFUELING, REST, ETC. THUS ARTICLE IS NOT NECESSARY FOR SPAIN. HOWEVER, AFTER CONSIDERATION OF US EXPLANATION, GOS DEL EXPRESSED DESIRE TO RETAIN THE ARTICLE, PERHAPS DUE TO FACT THAT IT PROVIDES RARE INSTANCE IN GIFA WHERE SPAIN APPEARS TO BE ON RECEIVING LIMITED OFFICIAL USE
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RATHER THAN GIVING END, OR CONFUSION AS TO US REASON FOR INCLUDING IT IN ORIGINAL DRAFT. THUS ARTICLE REMAINS IN WORKING PAPERS AS NEW ARTICLE XIV. DEPT. REMAINS OF VIEW THAT ARTICLE IS MISLEADING AND SHOULD BE DELETED IN US/GOS GIFA.

13. THE GOS DEL REQUESTED BRACKETS AROUND ARTICLE XV OF THE ORIGINAL DRAFT GIFA (NEW ARTICLE XVI). THE DEPT. IS UNCLEAR AS TO THE RATIONALE BEHIND THE GOS OBJECTION WHICH APPEARS TO BE RELATED TO THE CONCERN THAT THE GIFA ITSELF PREJUDICES GOS POSITION ON FISHERIES.

14. IN THE FINAL ARTICLE OF THE GIFA, THE GOS DEL REQUESTED THE AGREEMENT RUN FOR AN INITIAL PERIOD OF 5 YEARS WITHOUT OPTION FOR TERMINATION. AN AGREEMENT THAT PERIOD WITHOUT OPTION FOR TERMINATION IS NOT ACCEPTABLE TO DEPT.

15. ANNEX 1 WAS UNCHANGED IN SUBSTANCE. THE GOS DEL REQUESTED BRACKETS IN PARA 5 AROUND THE WORDS "AND SHALL NOT BE TRANSFERRED". THE DEPT. AGREED TO SUPPLY INFO TO THE GOS AS SOON AS POSSIBLE ON PROCEDURES FOR OBTAINING PERMITS FOR REPLACEMENT VESSELS WHEN THE FIRST VESSEL IS UNABLE TO CONTINUE FISHING FOR TECHNICAL REASONS. ALSO, THE DEPT. AGREED TO PROVIDE THE GOS ADDITIONAL DETAILS ON THE LEVEL OF FEES AS SOON AS POSSIBLE.

16. ANNEX II (AMERICAN-SPANISH FISHERIES BOARD) REFERRED TO IN NEW ARTICLE IX IS APPENDED TO THE WORKING PAPERS. THE GOS DEL SAID IT MAY RAISE SOME TECHNICAL QUESTIONS LATER ON THE OPERATION OF THE BOARD.

17. AN ANNEX III TITLED "DATA COLLECTION AND REPORTING REQUIREMENTS FOR SPANISH VESSELS" IS ATTACHED TO THE WORKING PAPERS. THIS ANNEX IS INTENDED TO CLARIFY THE LANGUAGE "IN ACCORDANCE WITH THE PRACTICE OF UNITED STATES SCIENTIST" IN ARTICLE XI OF THE ORIGINAL GIFA

(NEW ARTICLE XII). WITH RESPECT TO THIS ANNEX, NEW
ARTICLE XII SUBSTITUTES LANGUAGE IN LAST LINE OF ARTICLE
XI OF ORIGINAL GIFA WITH "IN ACCORDANCE WITH THE
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PROCEDURES IN ANNEX III, WHICH CONSTITUTES AN INTEGRAL
PART OF THIS AGREEMENT".

18. EMBASSY MAY WISH TO CONTACT MORO OR HIS DEPUTY CONDE
TO ASSESS THEIR THINKING FOR SUBSEQUENT NEGOTIATIONS.

19. FOR MADRID AND COPENHAGEN: JOINT DEL REPORT AND
ATTACHED WORKING PAPERS WILL FOLLOW VIA AIR POUCH. EMBASSY
ECON/COMM COUNSELOR ATTENDED WRAP UP MEETING AND RECEIVED
COPY WORKING PAPER. ROBINSON

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